177657
S.A. 4

ELLIS LAWHORNE

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January 27, 2006

VIA ELECTRONIC MAIL AND HAND-DELIVERY
The Honorable Charles L.A. Terreni
Chief Clerk
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

1/27/06
tad

RE: Joint Petition for Arbitration of NewSouth Communications, Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius [Affiliates] of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended
Docket No. 2005-57-C, Our File No. 803-10208

Dear Mr. Terreni:

Enclosed is the original and ten (10) copies of the **Petition for Clarification and Further Guidance** for filing on behalf of the Joint Petitioners in the above-referenced docket. By copy of this letter, I am serving all parties of record in this proceeding and enclose my certificate of service to that effect.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it via the person delivering same.

If you have any questions or need additional information, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,

John J. Pringle, Jr.

JJP/cr
cc: Office of Regulatory Staff
all parties of record
Enclosures

N/A
Ok tad

BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION
DOCKET NO. 2005-57-C

In the Matter of	)	
	)	
Joint Petition for Arbitration of	)	
NewSouth Communications, Corp.,	)	
NuVox Communications, Inc.,	)	
KMC Telecom V, Inc.,	)	CERTIFICATE OF SERVICE
KMC Telecom III LLC, and	)	
Xspedius [Affiliates] of an	)	
Interconnection Agreement with	)	
BellSouth Telecommunications, Inc.	)	
Pursuant to Section 252(b) of the	)	
Communications Act of 1934,	)	
as Amended	)	

This is to certify that I have caused to be served this day, one (1) copy of the **Petition for Clarification and Further Guidance** for filing on behalf of the Joint Petitioners, by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

Patrick Turner, Esquire
BellSouth Telecommunications, Inc.
P.O. Box 752
Columbia SC 29202

Florence Belser, Esquire
Office of Regulatory Staff
Legal Department
PO Box 11263
Columbia SC 29211

Carol Roof

January 27, 2006
Columbia, South Carolina
G:\APPS\OFFICE\WPWIN\WPDOCS\KMC-NewSouth-Nuvox-Xspedius\cert service wpd

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2005-57-C

In the Matter of

Joint Petition for Arbitration of NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius [Affiliates] of an Interconnection Agreement with BellSouth Telecommunications, Inc., Pursuant to Section 252(b) of the Communications Act of 1934, as Amended

Petition for Clarification and Further Guidance

The Joint Petitioners hereby file this Petition without waiving any position or argument they have taken or may make in this Docket. The Joint Petitioners appreciate the Commission's decision to deny BellSouth's motion to overrule the Hearing Officer's September 9, 2005decision. However, Joint Petitioners respectfully request clarification and further guidance regarding the "guidance" the Commission offered regarding the conflict alleged by BellSouth.

To this day, no sound legal basis has been established for striking testimony previously admitted in a contested proceeding based on claims of ethics rules infractions by a witness. Indeed, the ethics rules of this state establish that "**the purpose of the rules may be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule.**" S.C.R.P.C Rule

407, Preamble. Regrettably, the guidance offered by the Commission appears flatly at odds with the guidance contained in the preamble to the rules.

As set out herein, the Joint Petitioners request that the Commission consider further the "guidance" set out in Order No. 2006-11 in the following respects.[1]

The Commission advises that Mr. Russell's testimony is subject to exclusion to the extent that testimony "seeks to advocate or advance a position for the Joint Petitioners", and appears to state two bases for that advice: 1) that Mr. Russell may offer "inappropriate opinion testimony as to conclusions of law"; and 2) that his testimony may violate a "duty of loyalty" to BellSouth pursuant to Rules 1.7 and 1.10 of the South Carolina Rules of Professional Conduct.

Taking each in turn, the Joint Petitioners respectfully ask the Commission to explain why the Commission is giving unsolicited advice to the parties regarding "opinion testimony as to conclusions of law." No party has raised this issue at any point during this Docket. BellSouth never objected to the testimony of Mr. Russell (or any witness sponsored by the Joint Petitioners) on the basis that the testimony constituted "opinion testimony as to conclusions of law": not when any part of the Joint Petitioners' testimony was filed, not during the hearing, and not in any of the various BellSouth filings seeking to strike Mr. Russell's testimony. Moreover, BellSouth's own testimony is rife with opinion testimony as to what conclusions of law the Commission should reach. The Joint Petitioners respectfully ask the Commission to explain why giving BellSouth an argument it did not timely raise comports with fundamental fairness in the conduct of this Docket. Joint Petitioners respectfully maintain that it does not.

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[1] Joint Petitioners also take this opportunity to clarify the following points: (1) the Nelson Mullins law firm has represented NuVox in various matters since 2000 and during the pendency of the arbitration proceedings, *see* Order No. 2006-11 at 2, and (2) Mr. Russell's testimony was resubmitted because he does indeed adopt all of his prior testimony previously admitted in this arbitration docket, including prefiled testimony and hearing testimony, *see* Order No. 2006-11 at 4.

While the Joint Petitioners do not believe an objection based upon "legal opinion testimony" can be appropriately presented before the Commission at this juncture, the Joint Petitioners are thankful that the Commission recognizes that admissibility is the issue that the Commission must decide with respect to Mr. Russell's testimony, including his pre-filed and live hearing testimony. BellSouth, in its numerous pleadings and arguments in this Docket, has never acknowledged that the Rules of Evidence play a part in this dispute, much less that the issue encompasses the admissibility of the testimony. Instead, BellSouth raises ethical allegations and seeks a remedy not only not provided for but affirmatively rejected in the ethical rules.

The Joint Petitioners further respectfully request that the Commission explain how "advocating or advancing a position" on behalf of a party constitutes "inappropriate opinion testimony as to conclusions of law." The Commission cites to Rule 704 of the South Carolina Rules of Evidence as support for its guidance. However, the language of that rule – "Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact" -- clearly would appear to support allowing the testimony in. Thus, the Joint Petitioners respectfully request that the Commission explain how Rule 704 of the South Carolina Rules of Evidence would make Mr. Russell's testimony inadmissible. Joint Petitioners respectfully submit that it does not.

Similarly, the Joint Petitioners request that the Commission advise which Rule of Evidence pertains to the admissibility of Mr. Russell's testimony. The Rules of Evidence recognize two types of witnesses – those fact witnesses who do not testify as experts (Rule 701), and those who are qualified as experts (Rule 702). These two categories encompass all witnesses, regardless of whether a witness is a lawyer. Mr. Russell has been offered by the Joint Petitioners as a fact witness, and has never been qualified or presented as an expert witness in

this case. Mr. Russell was not an expert witness, and did not become an expert witness by virtue of giving an opinion regarding a legal conclusion. Mr. Russell presented (and seeks to present) no expert legal opinion. Accordingly, the Joint Petitioners believe that Rule 701 of the South Carolina Rules of Evidence governs the admissibility of Mr. Russell's testimony (and the testimony of every other witness in this proceeding). *Expert* legal testimony is objectionable in certain circumstances (*See, e.g.*, *Dawkins v. Fields,* 354 S.C. 58, 580 S.E. 2d 433 (2003), under Rule 702 of the Rules of Evidence—a rule of admissibility applicable to expert witnesses.

On a related issue, the Joint Petitioners would like the Commission to explain its citation to the *Shields* case, in view of the fact that the holding of the case *permitted* the testimony of the witness over the objection that it "commented on what the law is," *Shields*, 401 S.E.2d 443. Also, the reference to a citation from the 1964 C.J.S. – "As a general rule, a witness will not be permitted to state a conclusion, or opinion, of law . . . ." was not part of the Court's *decision* in that case but rather the *position* of the party that unsuccessfully sought to strike the testimony. Further, the case was issued before the Rules of Evidence were adopted in South Carolina. The Joint Petitioners fail to see how *Shields* could support the guidance provided by the Commission. Finally, even if the quoted language represented some part of the *Shields* decision on the issue before it (which it does not), as set out below the "general rule" at the Commission has been to allow witnesses to provide opinions regarding issues that are before the Commission for determination.

The Joint Petitioners respectfully request guidance with respect to why the Commission appears to have inexplicably reversed course with respect to its view of the admissibility of witness testimony. In counsel's experience, the Commission uniformly admits relevant testimony from the witnesses testifying before it, over any objection that the testimony contains

opinions as to legal conclusions.[2] For example, see the attached documents (**Exhibit One**) wherein BellSouth unsuccessfully attempted to strike the testimony of Michael Carowitz in Docket No. 1997-124-C. The Commission allows such testimony because it has been helpful to the Commission in its decisionmaking process, and because the dangers that arise when legal opinion testimony is heard by a jury do not exist at the Commission. The Joint Petitioners respectfully request that the Commission explain why it would abruptly and without explanation appear to be departing from that appropriate and long-standing practice -- especially, at this odd juncture when the record already had been accepted and closed in this docket in accordance with that practice.

Perhaps most importantly, if taking a position in this Docket on a contested issue constitutes "impermissible opinion as to a conclusion of law," the Joint Petitioners would ask the Commission to advise whether the testimony of every BellSouth witness in this proceeding might do exactly the same thing. The purpose of each witness' testimony as set out explicitly therein was to provide the party's position on the unresolved issues in this Docket. The Commission's determination, in turn, on each one of the unresolved issues before it, would be a conclusion of law.

According to the Commission's advice announced in Order No. 2006-11, witness testimony "advancing a party's position" would be impermissible to the extent such testimony opines with respect to a legal conclusion. As set out above, the Commission's resolution of each unresolved issue, which will involve the application of the Telecommunications Act to the proposed terms of the interconnection agreement, appears to represent a legal conclusion. Thus,

[2] The only exception to this practice has been when an expert witness (sponsored by BellSouth) attempted to offer an opinion that the Commission lacked the jurisdiction to order BellSouth to provide refunds to its customers. Such expert legal opinion testimony was properly excluded in that instance, because the expert, Professor Adams, was attempting tell the Commission what it could and could not do.

a witness' position on an unresolved issue in this Docket would appear to be impermissible, because the Commission's decision on every such issue will be a "legal conclusion." Put another way, the parties have differing positions on how applicable law applies to or governs the Commission's arbitration of terms of their interconnection agreements. Therefore, testimony supporting one party's position suggests a legal conclusion – "you should rule our way." The Commission appears to be telling the parties that such testimony – at least when it comes from Joint Petitioners' witness -- is inappropriate. Respectfully, that seems neither right nor fair.

As the parties and the Commission are well aware, both BellSouth and the Joint Petitioners have sponsored such testimony without objection (in South Carolina and across the Southeast), because the information and opinions provided by the parties' witnesses are helpful to the Commission in making its decision in this Docket. Further, those opinions go to the ultimate issue in this proceeding: How the Commission should apply the Federal Telecommunications Act to rule on the issues about which the parties differ. The Joint Petitioners respectfully ask the Commission to explain the rationale for its guidance that suggests that it may deny the presentation of these positions via testimony.

In the Commission's next piece of advice, the Commission stated, without explanation, that "to the extent Russell gives testimony that seeks to advocate a position, such testimony would also appear to conflict with his duty of loyalty to BellSouth, and that BellSouth could also object to the testimony on those grounds." The Joint Petitioners respectfully request that the Commission provide some further clarification or guidance on this point. Particularly, the Joint Petitioners request that the Commission provide advice on the following points, that have been raised by the Joint Petitioners:

a) any authority for the guidance that witness testimony "advancing a position" on behalf of a party constitutes "representation" or "advocacy" as those terms are used in the Rules of Professional Conduct;

b) any authority for the guidance that offering testimony (as to conclusions of law or otherwise) makes a witness an "advocate" as that term is defined by the Rules of Professional Responsibility. In other words, please explain how the rules contemplate that a person can be a witness and an "advocate" while appearing as a witness but not as counsel of record;

c) how the Commission's guidance comports with the definition of "appearance" found in Commission Rule 103-804(R), the definition of "representation" found in Commission Rule 103-804(S)(1), and the provisions of Commission Rule 103-867;

d) how Rule 1.7, when read in conjunction with Rule 3.7, supports the Commission's guidance that a witness is an "advocate" when his testimony "advances a position" on behalf of a party;

e) how the Commission's guidance comports with the Advisory Opinions issued by the Bar, particularly to those opinions discussing a lawyer's obligation when he is called upon to be a "witness" and an "advocate";

f) any case law supporting the guidance provided by the Commission;

g) any authority for the proposition that a "violation" of the Rules of Professional Conduct can serve as the basis for a refusal to admit otherwise admissible testimony;

Joint Petitioners also request that the Commission clarify how it determined that Mr. Russell had a duty of loyalty to BellSouth when performing his role as a witness. At that time, Mr. Russell was a NuVox vice president. He also was an attorney employed by a firm that has represented NuVox and BellSouth in various South Carolina proceedings during the pendency of the arbitrations, but has represented neither this proceeding.

Similarly, the Joint Petitioners request that the Commission review the following passage from the Rules of Professional Responsibility and provide its view of how it should be considered in the context of the guidance it has offered (emphasis added):

> Violation of a Rule should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached. The Rules are designed to provide guidance to lawyers and to provide a structure for

> regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. **Furthermore, the purpose of the rules may be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule.**

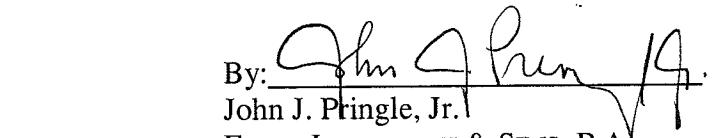
Rule 407, Preamble.

Finally, the Joint Petitioners request that the Commission consider its previous advice in the context of the attached Affidavit of John P. Freeman (**Exhibit 2**), which the Joint Petitioners provide as additional argument[3] in support of their positions on this issue.

The Joint Petitioners would greatly appreciate the Commission's further guidance and clarification on this matter. With all due respect, Joint Petitioners believe that the guidance requested here will point toward restoration of Mr. Russell's pre-filed testimony, as amended, and his hearing testimony as given. Joint Petitioners look forward to the fair and successful conclusion of this debate and the arbitration.

[SIGNATURE BLOCK ON NEXT PAGE]

[3] The Joint Petitioners ask that they be spared any *Dawkins v. Fields* arguments. The Joint Petitioners are not at this time asking that this Affidavit be part of the evidentiary record in this case. Joint Petitioners do not anticipate that Professor Freeman will be providing testimony of any type. As set forth above, the arguments made in this Affidavit support those made by the Joint Petitioners, and the Joint Petitioners offer them for that purpose only.

By: 

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Attorneys for the Joint Petitioners

Columbia, South Carolina
January 27, 2006

Exhibit 1

97-124

Robert A. Culpepper
Attorney
Legal Department

Suite 821
1600 Hampton Street
Columbia, South Carolina 29201
803 253-5953
Fax 803 254-1731

December 8, 1998

The Honorable Gary E. Walsh
Acting Executive Director
Public Service Commission of SC
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Revisions of BellSouth Telecommunications, Inc. to its General Subscriber Service Tariff and Access Services Tariff to Comply with the FCC's Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996. Docket No. 97-124-C

Dear Mr. Walsh:

Enclosed for filing, please find the original and 10 copies of BellSouth Telecommunications, Inc.'s Motion to Strike the Testimony of Michael Carowitz Filed by the South Carolina Public Communications Association in the above-referenced docket.

By copy of this letter, I am serving the same on all parties of record in this matter.

Sincerely,

Robert A. Culpepper

RAC/nml
Enclosures
cc: John F. Beach, Esquire (w/ enclosures)
Francis P. Mood, Esquire w/enclosures)
F. David Butler, Esquire (w/enclosures)

BEFORE THE

PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 97-124-C

In RE:	
Revisions of BellSouth Telecommunications, Inc. To its General Subscriber Service Tariff and Access Services Tariff to Comply with the FCC's Implementation of the Pay Telephone Reclassification and Compensation Provisions Of the Telecommunications Act of 1996 (Ref: TN 97-120)	BELLSOUTH'S MOTION TO STRIKE THE TESTIMONY OF MICHAEL CAROWITZ FILED BY THE SOUTH CAROLINA PUBLIC COMMUNICATIONS ASSOCIATION

PLEASE TAKE NOTICE that the Applicant BellSouth Telecommunications, Inc. ("BellSouth"), hereby moves for an Order of the Public Service Commission of South Carolina ("Commission") striking the testimony of Michael Carowitz pre-filed by Intervenor South Carolina Public Communications Association ("SCPCA"). In support of this motion, BellSouth would respectfully show the following:

1. In this docket, the Commission will review BellSouth's existing intrastate tariffed rates for its payphone lines. Specifically, the Commission has been asked by the SCPCA to examine BellSouth's rates for its Public Telephone Access Service ("PTAS") and Smartline® service.

2. One of the contested issues in this docket is whether BellSouth's existing tariffed rates for its payphone lines comply with the Federal Communications Commission's ("FCC") new services test. It is the position of the SCPCA that BellSouth's existing rates for its payphone lines do not meet the new services test.

3. Pursuant to the filing deadlines set forth by the Commission, on November 10, 1998, BellSouth pre-filed the testimony of Sandy E. Sanders and D. Daonne Caldwell. Both Mr. Sanders and Ms. Caldwell are BellSouth employees who have testified on many occasions before this Commission. Mr. Sanders' testimony addresses the new services test.

4. On November 25, 1998, pursuant to the Commission's filing deadlines, the SCPCA pre-filed the testimony of Walter Rice, Vince Townsend, Don Wood, and Michael Carowitz. BellSouth moves to strike Mr. Carowitz's testimony.

5. Mr. Carowitz is an attorney employed by Dickstein Shapiro, Morin & Oshinsky, LLP. One of Dickstein Shapiro's principal telecommunications clients is the American Public Communications Council ("APCC"), an association representing the interest of payphone service providers throughout the United States.

6. Mr. Carowitz is a former FCC employee who served as a staff attorney with the FCC in the Enforcement Division of the FCC's Common Carrier Bureau from April 1994 through September 1995. In that capacity, Mr. Carowitz claims he "had continuing

responsibility as the principal attorney on the FCC's ongoing Payphone Compensation/OSP Access proceeding." (Carowitz Direct Testimony, p. 2). Mr. Carowitz also states in his testimony that he was a legal advisor to the Enforcement Division of the FCC's Common Carrier Bureau from October 1995 through December 1997, where he claims he "facilitated all aspects of the Commission's implementation of the payphone service provisions (Section 276) of the Telecommunications Act of 1996." Id. at 3. He also claims he was the "Lead Attorney and principal author of the Commission's *Payphone Orders*[1] in the Payphone Reclassification and Compensation proceeding. Id. at 3. Mr. Carowitz further testifies about advice he claims he gave to inquiries regarding the *Payphone Orders* while he was at the FCC, and testifies as to what he says the FCC "realized," what the FCC "recognized," and how the FCC "felt." Id. at 6, 8 and 10. This testimony is inappropriate, irrelevant, and inadmissible.

7. Mr. Carowitz's testimony, in addition to being irrelevant and inappropriate, presents a possible violation of 47 U.S.C. § 19.735-203, which forbids the disclosure of non-public information outside the FCC. Mr. Carowitz testifies to what he

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[1] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-128, *Report and Order,* FCC 96-388 (rel. Sept. 20, 1996) ("*Report and Order*"), *Order on Reconsideration,* FCC 96-439 (rel. Nov. 8, 1996) ("*Order on Reconsideration*"), *Order,* DA 97-678 (Com. Car. Bur., rel. Apr. 4, 1997) ("*Bureau Waiver Order*"), *Order,* DA 97-805 (Com. Car. Bur., rel. Apr. 15, 1997) ("*Second Bureau Waiver Order*"). (Collectively, the "*Payphone Orders.*")

says is the meaning of the *Payphone Orders* issued by the FCC while he worked at the FCC. He purports that he has some special knowledge by virtue of his former position that qualifies him to state what the FCC intended by the orders in question.

8. Mr. Carowitz's testimony improperly disregards a former employee's continuing obligation of confidentiality to the FCC. Just as a single former FCC commissioner cannot properly testify as to what was meant when the full Commission voted on various orders, a single Commission staff attorney cannot properly testify as to what the FCC meant in its orders. An order must be read "within the four corners" of the document and cannot be interpreted by a single participant in the proceeding.

9. Mr. Carowitz's testimony goes beyond editorial discretion and general opinion based on public information. He clearly attempts to use his former position at the FCC as a staff attorney to submit an expert opinion on the meanings and interpretations to be given the *Payphone Orders*. This is evidenced by his statements throughout his testimony as to what he claims the FCC "realized," "recognized," and "felt." Id. at 6, 8 and 10.

10. As stated above, one of the vigorously contested issues in this docket is whether BellSouth's existing tariffed rates for its payphone lines meet the new services test. In support of its position on this issue, BellSouth filed the testimony of Sandy Sanders. Mr. Sanders' supplemental direct testimony sets forth

the new services test and discusses why, in his judgment, BellSouth's existing rates satisfy the test.

11. In testimony filed on behalf of the SCPCA, both Mr. Wood and Mr. Carowitz discuss the new services test. Mr. Wood's testimony contains an extensive discussion as to why, in his judgment, BellSouth's existing rates do not meet the new services test. (Wood Direct Testimony, pp. 29-37, 42-43).

12. In stark contrast, Mr. Carowitz's testimony is an improper legal opinion and should be stricken. Mr. Carowitz in his testimony sets forth the new services test and then attempts to instruct the Commission as to how to apply the test based on his asserted legal expertise as primary author of the FCC *Payphone Orders*. In other words, Mr. Carowitz attempts to tell the Commission how to rule in this proceeding based on his interpretation of the applicable law and how it should be applied in this docket. Mr. Carowitz's testimony is improper and should be stricken based on well-settled South Carolina case law and Commission precedent. O'Quinn v. Beach Associates, 249 S.E.2d 734, 739-740 (S.C. 1978)(upholding trial court's decision to exclude expert testimony which attempted to establish a conclusion of law).

13. In the O'Quinn case, the trial court refused to allow an expert witness to testify as to whether the offering of condominium units for sale at Hilton Head Island constituted the offering of investment contracts under applicable federal law.

Id. at 739. In affirming the trial court on this issue, the South Carolina Supreme Court quoted with approval the trial court's reasoning for excluding the expert testimony. Id. at 739-740. The following portion of the trial court's reasoning for excluding the expert testimony was emphasized by the Supreme Court:

> *You are asking Professor McCarthy to relate to this Court his understanding and his interpretation of the law that would be applicable to the facts and issues here. And I know of no authority in this state nor statute or by the case law which permits that to be done.*

249 S.E.2d at 739. A similar attempt to offer a legal opinion as expert testimony is being made here. The SCPCA is offering the testimony of an expert witness, Mr. Carowitz, and is asking the Commission to accept his understanding and interpretation of the applicable federal law and how it should be applied to the facts and issues involved in this hearing. It is respectfully submitted that a similar result should be reached by the Commission--it should not permit Mr. Carowitz to invade the responsibility and exclusive province of the Commission. As a result, the Commission should strike the testimony in its entirety.

14. Striking Mr. Carowitz's testimony would also be consistent with Commission precedent established in a BellSouth earnings review docket. Specifically, in Commission Docket No. 93-503-C, Order No. 95-2, dated January 5, 1995, the Commission

reaffirmed its decision to exclude the pre-filed testimony of Gregory B. Adams, a University of South Carolina Law Professor. Order No. 95-2, pp. 8-9.

15. In Docket No. 93-503-C, BellSouth (f/k/a Southern Bell) pre-filed the testimony of Professor Adams in an attempt to show that a Commission ordered refund would constitute retroactive ratemaking based on his review of the applicable legal authority and the circumstances of the case. Citing the O'Quinn case, the Commission excluded Professor Adams' testimony:

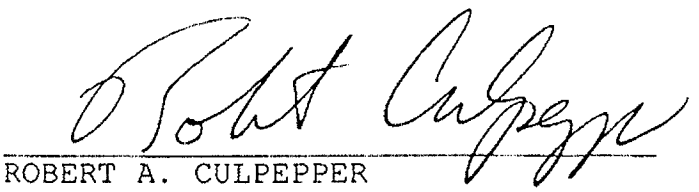
> The Commission concludes it properly excluded witness Adams' testimony from this proceeding. It is clear that witness Adams' testimony was offered to establish the legal conclusion that this Commission does not have the legal authority to order refunds under the circumstances of this case. Clearly, this testimony was improper.

Order No. 95-2, p. 9. Here the SCPCA is attempting to offer the testimony of Mr. Carowitz to establish a legal conclusion that this Commission may reach, i.e. the proper interpretation and application of the new services test. Clearly, this testimony is improper and should be stricken.

16. Prior to filing this motion, the undersigned certifies that he spoke with opposing counsel and made a good faith attempt to resolve the matters contained herein.

For the reasons stated herein, it is respectfully submitted that the pre-filed testimony of Michael Carowitz should be stricken in its entirety from this docket.

Respectfully submitted,



ROBERT A. CULPEPPER
BellSouth Telecommunications, Inc.
Suite 821 - 1600 Hampton Street
Columbia, South Carolina 29201
(803) 253-5953

December 8, 1998

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. and that she has caused BellSouth Telecommunications, Inc.'s Motion to Strike the Testimony of Michael Carowitz Filed by the South Carolina Public Communications Association in Docket No. 97-124-C to be served by placing such in the care and custody of the United States Postal Service, with first-class postage affixed thereto and addressed to the following this December 8, 1998:

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Sinkler & Boyd, P.A.
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F. David Butler, Esquire
General Counsel
S. C. Public Service Commission
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Nyla M. Laney

BEACH LAW FIRM, P.A.

ATTORNEYS AT LAW

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JOHN F. BEACH
JOHN J. PRINGLE, JR

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TELEPHONE 779-0066
FACSIMILE 799-8479

December 9, 1998

VIA HAND DELIVERY
The Honorable Gary E. Walsh
Executive Director
South Carolina Public Service Commission
PO Drawer 11649
Columbia SC 29211

RE: Revisions of BellSouth Telecommunications, Inc. to its General Subscriber Service Tariff and Access Services Tariff to Comply with the FCC's Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996
(Ref: TN 97-120), **Docket No. 97-124-C,** ***Our File No. 97.24***

Dear Mr. Walsh:

Enclosed is the original and ten (10) copies of **The SCPCA's Return to BellSouth's Motion to Strike the Testimony of Michael Carowitz** filed on behalf of the South Carolina Public Communications Association, ("SCPCA") in the above-referenced docket. By copy of this letter, I am serving all parties of record and enclose my certificate of service to that effect.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it in the enclosed envelope.

If you have any questions or need additional information, please do not hesitate to contact me.

With kind regards, I am

Very truly yours,

John J. Pringle, Jr.

JJP, jr./cr
cc: Florence Belser, via facsimile and hand-delivery
Mr. Walter Rice
all parties of record
Enclosures
G:\APPS\OFFICE\WPWIN\WPDOCS\SCPCA\97-124-C\WALSH.RET

BEFORE THE

PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 97-124-C

In RE:	)	
	)	
Revisions of BellSouth	)	
Telecommunications, Inc. to	)	
its General Subscriber Service	)	**THE SCPCA'S RETURN TO**
Tariff and Access Services Tariff to	)	**BELLSOUTH'S MOTION TO STRIKE**
Comply with the FCC's	)	**TESTIMONY OF MICHAEL CAROWITZ**
Implementation of the Pay	)	
Telephone Reclassification and	)	
Compensation Provisions of the	)	
Telecommunications Act of 1996	)	
(Ref: TN 97-120)	)	

The South Carolina Public Communications Association ("SCPCA") hereby responds to the "Motion to Strike the Testimony of Michael Carowitz Filed by the South Carolina Public Communications Association" (the "Motion" or "BellSouth Motion") filed by BellSouth Telecommunications, Inc. ("BellSouth"). The SCPCA presents the following in support of its motion:

1. As an initial matter, the Commission's role and duty in this proceeding is to hear all relevant evidence presented by the parties, and then make a ruling consistent with the Commission's statutory mandate, and ultimately the best interest of the citizens of the State of South Carolina. It is telling that the SCPCA has presented the testimony of someone who understands the issues and context of this Docket more completely than perhaps anyone in the United States, and BellSouth is attempting to silence him. The Commission is charged with a potentially confusing task: to implement a portion of the Federal Telecommunications Act of 1996

(the "Act"), which has been implemented by the Federal Communications Commission ("FCC") in its *Payphone Orders*. In order for the Commission to have a complete record before it, the parties must be allowed to present all relevant testimony.

2. BellSouth's accusation that Mr. Carowitz's testimony "presents a possible violation of 47 U.S.C. § 19.735-203" is wholly inappropriate. This Commission is not empowered to rule on whether such a "violation" took place, and BellSouth's implication that Mr. Carowitz may have disclosed "non-public information outside the FCC" is an attempt to intimate to this Commission that Mr. Carowitz's has violated a duty of confidentiality owed to the FCC.

3. In spite of raising this issue in its Motion, BellSouth fails to point out any specific portion of Mr. Carowitz's testimony that contains or may contain "non-public information."

4. In addition, contrary to BellSouth's assertion that Mr. Carowitz's testimony is an "improper legal opinion", Mr. Carowitz is not making legal conclusions, but providing background, context and information that the Commission needs in order to rule in this Docket, all of which are factual matters.

5. Rule 702 of the South Carolina Rules of Evidence, "Testimony by Experts", states "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

6. Mr. Carowitz's former position at the FCC and involvement with the Payphone Reclassification proceeding has been offered by the SCPCA to establish his knowledge, experience

and training in the field of telecommunications in a general sense, and exposure to payphone issues in a specific sense.

7. Mr. Carowitz is knowledgeable about the landscape of the telecommunications field as it existed prior to the passage of the Act, having practiced law in that area during a portion of that period of time. In addition, he understands the framework of the Act passed by Congress, and its implementation by the FCC. In particular, he is familiar with Section 276 of the Act, which addressed the regulation of the payphone market, and the *Payphone Orders* issued by the FCC and its Common Carrier Bureau.

8. Rule 704 of the South Carolina Rules of Evidence, "Opinion on Ultimate Issue", further provides that "[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Mr. Carowitz testifies specifically to the issue of whether BellSouth has complied with Section 276 of the Act as implemented by the *Payphone Orders*.

9. Mr. Carowitz explains why conditions in the payphone market existing prior to the passage of the Act required Congress to encourage competition in the industry, and how Section 276 of the Act and the FCC's Orders implementing it were designed to spur development of a competitive market for payphones.

10. The testimony of Mr. Carowitz discusses why Congress' purpose in passing Section 276 of the Telecom Act is satisfied by reductions in the payphone line rate and rates for associated payphone features, why it is inappropriate for BellSouth to charge payphone service providers ("PSPs") a line rate more than double its cost for that line, and why it is inappropriate for

BellSouth to collect from PSPs access charges such as the Subscriber Line Charge ("SLC") and the Primary Interexchange Carrier Charge ("PICC"), in view of the fact that BellSouth's rates already compensate it fully for all costs associated with the payphone line. In summary, the testimony Mr. Carowitz presents relates directly to the very rates that are before this Commission for review, and how this Commission should set them.

11. All of Mr. Carowitz's opinions in his testimony are offered by him purely as an individual. He is not purporting to testify to events, facts, or other information unavailable to any witness in this proceeding, or any person for that matter. His status as an expert and the reason he testifies on behalf of the SCPCA is because he possesses a great deal of knowledge that is relevant to this proceeding. Neither Mr. Carowitz nor any witness of the SCPCA is telling the Commission that it must rule a certain way; Mr. Carowitz is simply attempting to persuade the Commission that the SCPCA's interpretation of the "new services" test, based on the policy and economic background existing prior to the Act, the aims of the Act and Section 276, and subsequent FCC implementation of Section 276 by the *Payphone Orders*, requires that the Commission grant the relief requested by the SCPCA.

12. The case law and precedent cited by BellSouth simply does not apply to this proceeding. In O'Quinn v. Beach Associates, the trial judge excluded expert testimony because it was "offered to establish a conclusion of law within the exclusive province of the court . . . ." O'Quinn, 249 S.E.2d at 739.

13. In a proceeding taking place in the court system of the State of South Carolina, the "[c]ourt has a responsibility to determine the law involved in this case." Id. In the South Carolina

court system, it is well settled that the jury functions as the finder of fact. See, e.g., Collier v. Green, 244 S.C. 367, 137 S.E.2d 277 (1964). In the court system, the possibility for juror confusion is created if an expert is allowed to testify about the law of the case. If such a situation were allowed to occur, both the testifying expert and the judge would be in a position of instructing the jury on the law to which the jury should apply to the facts. The rule as pronounced in O'Quinn then, is designed to ensure that only the judge instructs the jury on the applicable law of the case.

14. The instant situation is completely different. The Commission sits as judge and jury, empowered to determine both the law of the case and the application of the facts to that law. The Commission also has the ability to judge the credibility of all expert witnesses giving testimony, and the weight to be given to their opinions. The Commission (as well as BellSouth) will have the opportunity to question Mr. Carowitz. Thus, even if some discussion of legal opinion should reach the Commission's ears (as will be discussed below), unlike a jury the Commission has the wherewithal and ability to weigh the testimony of both sides without the threat of being prejudiced by the submissions of either side.

15. The SCPCA believes that the structure of this proceeding protects the Commission's ability to maintain its "responsibility and exclusive province" to decide the issues in this case. BellSouth's assertion to the contrary is a mere canard seeking to silence Mr. Carowitz.

16. The instant case is also different from the facts of Docket No. 93-503-C, discussed in BellSouth's Motion. In that Docket, Professor Adams' proposed testimony called into question

the legal authority of the Commission to rule in the case. Unlike Professor Adams in Docket No. 93-503-C, however, Mr. Carowitz seeks not to narrow or expand the Commission's jurisidiction based on his interpretation of state or federal law, but rather merely to present his opinion to the Commission that the SCPCA is entitled to the relief it seeks, based on his understanding of the Act and the FCC *Payphone Orders*.

17. In addition, Mr. Carowitz states no opinions that BellSouth's own witnesses have not presented in their own prefiled testimony in this Docket. For instance, on Page 5 of the Supplemental Direct Testimony of Sandy E. Sanders, filed on November 10, 1998, Mr. Sanders is asked "Do PTAS and Smartline Service meet the FCC's "new services" test?" Mr. Sanders responds "Yes they do, as I will explain later in my testimony." On Page 8, Mr. Sanders asserts that "[t]he FCC's "new services" test requires that prices be set at levels that do not recover more than a just and reasonable portion of overhead costs." By making such a statement, Mr. Sanders is telling the Commission the legal requirements of the "new services" test.

18. Further, Ms. Caldwell also purports to lecture the Commission on the law of this case. On Page 6 of her Supplemental Direct Testimony, filed with this Commission on November 10, 1998, Ms. Caldwell states "However, the FCC recognizes that shared and common costs exist and should be recovered." Ms. Caldwell cites no authority for her assertion, but merely gives the Commission her legal opinion.

19. The above-referenced Supplemental Direct Testimony of Mr. Sanders and Ms. Caldwell was filed on November 10, 1998, prior to the filing of Mr. Carowitz's testimony by the

SCPCA. By lacing testimony with opinions on the legal standards applicable to the issues in this this Docket, BellSouth opened the door for the submission of this opinion testimony.

20. The Rebuttal Testimony of William E. Taylor, Phd., filed by BellSouth on December 7, 1998 contains similar opinion testimony on the subject of what the Federal Communications Commission ("FCC") has: "laid out", "decreed" (Page 8); "specifically and pointedly declined to require", "instituted" (Page 9); "never clearly indicated" (Page 13); "interpreted", "defined" (Page 14); and "specifically ruled out" (Page 15), just to cite a few examples. Like Mr. Carowitz, Dr. Taylor is calling upon his experience in the telecommunications field as a basis to offer testimony that will help the Commission make its decision in this Docket.

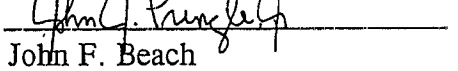
21. It is clear that the BellSouth witnesses have submitted their "understanding and interpretation of the applicable federal law and how it should be applied to the facts." The Commission should not be fooled by BellSouth's attempt to hamper unfairly the SCPCA's ability to present its views on the subjects of this Docket.

22. If the Commission were to grant BellSouth's Motion, the SCPCA would be forced to file a Motion to Strike the Testimonies of each of the BellSouth witnesses. Although the SCPCA believes that the Commission needs to consider the testimony of each of the witnesses presented in this proceeding, consistency would require that the Commission grant the same relief requested by BellSouth in its Motion.

WHEREFORE, having set forth fully its Motion, the SCPCA respectfully requests that the Commission deny BellSouth's Motion to Strike the Testimony of Michael Carowitz Filed by the South Carolina Public Communications Association, and for such other relief as the Commission deems just and proper.

Respectfully Submitted,

BEACH LAW FIRM, P.A.

BY: 

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December 9, 1998
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BEFORE THE

PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 97-124-C

In RE:	)	
	)	
Revisions of BellSouth Telecommunications, Inc. to its General Subscriber Service Tariff and Access Services Tariff to Comply with the FCC's Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (Ref: TN 97-120)	)	**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day, one (1) copy of **The SCPCA's Return to BellSouth's Motion to Strike the Testimony of Michael Carowitz** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed thereto and addressed as follows:

VIA HAND DELIVERY
Robert Culpepper, Esquire
BellSouth Telecommunications, Inc.
Legal Department
1600 Hampton Street
Columbia SC 29201

Francis P. Mood, Esquire
Sinkler & Boyd, PA
PO Box 11889
Columbia SC 29211-1889

Carol Roof

December 9, 1998
Columbia, South Carolina
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agreement with going forward with the Hearing as Mr. Beach just proposed.

CHAIRMAN BRADLEY: OK. That will be fine.

MR. BEACH: The second Motion, Mr. Chairman, is the Motion made by BellSouth, and they have moved to strike the Testimony of one of our expert witnesses, Mr. Michael Carowitz.

CHAIRMAN BRADLEY: OK. Mr. Culpepper?

MOTION BY MR. CULPEPPER

MR. CULPEPPER: Mr. Chairman, BellSouth has moved to strike the prefiled Testimony of Michael Carowitz and the grounds for this are very straightforward. There are essentially 3 grounds. That is: Mr. Carowitz's Testimony is improper based on South Carolina Case Law,

Commission Precedent, Rule 702 of the South Carolina Rules of Evidence. Mr. Carowitz is an Attorney who professes to be the author of the Pay Phone Orders. Now the issue in this Docket is the New Services Test and how that test should be interpreted, considered and applied to BellSouth's rates for its Public Telephone Access Service - PTAS lines - and SmartLine®. Now, BellSouth has presented . . . is ready to go forward with this case. Mr. Carowitz's Testimony is offered with the purpose of explaining to this Commission what the New Services Test is, and more importantly, to interpret and to purport to tell this Commission how it should be interpreted and applied to the . . . in this proceeding. Mr. Carowitz's Testimony is improper from the standpoint that it is a legal opinion. This Commission

ruled, in a very similar situation, in Order #95-2, whereupon BellSouth - then known as Southern Bell - attempted to introduce the Testimony of a law Professor to opine that this Commission lacked the authority to order refunds. The Commission disallowed that Testimony, citing a case known as *O'Quinn vs. Beach Associates* for the proposition that that Testimony was improper and should not be admitted. *O'Quinn* is another case, similar situation, where a Trial Judge disallowed the Testimony of an expert who was attempting to testify that the offering of securities, condos at Hilton Head, constituted the offering of investment contracts under Federal law.

In this case, Mr. Carowitz is attempting to tell you his interpretation of these Pay Phone Orders. New Services Tests is a -

you will hear plenty testimony about it, is a very generic test. Mr. Carowitz is attempting to tell you, based on his position or prior position, what that means and how it should be applied. The applicable Rule of Evidence, Rule 702, which states, with regard to expert testimony, that if scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, then a witness may, if was otherwise qualified, may testify thereto, in the form of an opinion. Mr. Carowitz's testimony, based on his specialized knowledge as the asserted author of these Pay Phone Orders, does not assist this Commission in its position as a trier of fact. All he says, essentially, is "believe me when I

tell you what the New Services Test really means and based on the evidence, the facts, how it should be applied." That argument, is respectfully submitted, should be made from Counsel table or in the form of a Brief but not in the form of sworn Testimony. Therefore, under Rule 702, South Carolina Rules of Evidence, it should be excluded. And if I may . . . in the anticipation of Argument to be made by Counsel, Rule 704 discusses opinion on the ultimate issue. Rule 704 states that Testimony in the form of an Opinion, otherwise admissible, is not objectionable because it embraces the ultimate issue decided by the Trier of Fact. In this instance this Commission is Trier of Fact.

It's respectfully submitted, you never get to Rule 704 because the Testimony is not otherwise

admissible. It doesn't get through the gate of Rule 702 because it doesn't satisfy the requirements of 702 because this Testimony does not assist this body in its Trier of Fact mode to reach, to determine an issue of fact. And therefore, it is respectfully submitted, based on South Carolina Case Law, the O'Quinn case, Order 95-2 of this Commission, Commission Precedent and Rule 702 of South Carolina Rules of Evidence, Mr. Carowitz's Testimony should be stricken in its entirety and excluded from the Docket in this matter.

CHAIRMAN BRADLEY: Mr. Beach?

REPLY BY MR. BEACH

MR. BEACH: Mr. Chairman, if the Commission were to accept BellSouth's Motion, they would have to throw out all of BellSouth's

Testimony, too. Because, the first thing and frankly, about the only thing that Mr. Sanders testifies to, is his opinion that the PTAS and SmartLine® rates that are at issue in this proceeding meet the FCC's requirements for the New Services Test. That's clearly testimony that goes to the ultimate issue of this proceeding. We think that it's appropriate under Rule 704 of the Rules of Evidence and we think that it's also appropriate for Mr. Carowitz to testify that he doesn't believe that the rates at issue here meet the FCC's New Services Test. Likewise, Ms. Caldwell testifies to . . . her testimony goes to that same ultimate issue of fact. There are a number of quotes that we've cited in our Opposition to this Motion. William Taylor, his Testimony, again, is laced with the same type of language that BellSouth

contends is objectionable for Mr. Carowitz. Frankly, it's a shame here really, because Mr. Carowitz truly was involved . . . he was at the center of this Telecom Act and the Orders that were issued by the FCC implementing the Act. He really can provide this Commission with more knowledge and insight into the decision that needs to be made here than anyone probably . . . well, than most people in the United States. And it strikes me that it would be a real shame if he weren't allowed to give his expertise and knowledge and be here for the Commissioners to ask any questions that they might have.

The other thing, too, Your Honor, is Mr. Carowitz's Testimony is not simply his interpretation of some legal point. He spends a lot of time, in his Testimony, explaining the landscape of

telecommunications that resulted in Congress passing the Telecom Act of 1996. He explains how the Pay Phone Industry was structured at that time. He explains how the provisions of the Telecom Act and then the FCC's Implementation will change the way the Pay Phone Industry structured so that it will increase competition and increase the deployment of pay phones to the public and he also gives factual testimony on points that relate to the costs that BellSouth has presented in this proceeding which is, of course, the core of this proceeding and how that costs should be translated into a rate to the general public that is cost based.

The O'Quinn case, Your Honor, was decided in the late '70s before Rule 704 of the Rules of Evidence Act. I have actually offered, successfully offered expert

Testimony on the very question that was at issue in that case. I've offered Testimony from the Securities Commissioner of the Attorney General to the effect that a certain investment was a security and there were no objections. The reason there were no objections was because Rule 704 basically preempts the Courts ruling in O'Quinn.

So, for those reasons, we would ask that the Commission allow Mr. Carowitz to testify here today in full and we think that it will be beneficial to the Commission's decision and ultimately, of course, the reason we're all here is to benefit the public.

CHAIRMAN BRADLEY: Would you address Rule 702?

MR. BEACH: Rule 702 talks about specialized knowledge that will assist the Trier of Facts to understand the evidence or to

determine a fact in issue. Clearly, Mr. Carowitz, in light of his knowledge of this particular subject, has specialized knowledge that we think enlightens the Commission, the Trier of Fact, on the evidence which is BellSouth's cost submission in this Docket. He is . . . he is . . . his Testimony is virtually identical of the flip side of what William Taylor's Testimony is. And, again, BellSouth can't argue that Mr. Carowitz's Testimony is proper - or improper - without agreeing that all 3 of its Witnesses would also be improper under that same test. That's the reason that we're all here today is to hear people and hear their opinions on how these rates either do or do not comply with the Cost Base Standard that was set by the FCC to comply with Section 276 of the Telecom Act.

CHAIRMAN BRADLEY: OK. Ms. Belser?

MS. BELSER: Thank you, Mr. Chairman.

REPLY BY MS. BELSER

MS. BELSER: Mr. Chairman, the Staff would submit that the Motion to Strike is not proper at this time. The Staff would take the opinion that Rule 704 allows an opinion on ultimate issues before the Commission, as the Rule states. The Staff would also point out that Counsel for BellSouth indicated that Commission Precedent would not allow this. The Staff would point out that, in that case, I believe Counsel was referring to the Hearing in that matter was in August of 1994. The Commission Order, which ruled that Testimony inadmissible from a law Professor, was issued in

January of '95. These Rules of Evidence became effective in September of '95 so these Rules post date that Commission Precedent as well as the O'Quinn case as Counsel for the Pay Phone Association has pointed out. At this point the Commission is left to determine what weight to give the Testimony of any Witness before the Commission - whether it be this expert or an expert from BellSouth or whatever. So, the Staff would take the position that the Testimony is proper and may assist - we're not guaranteeing it - but it may assist the Commission is making its determination.

CHAIRMAN BRADLEY: Commissioner Scott has a question.

COMMISSIONER SCOTT: Mr. Culpepper, in your argument I didn't hear you argue 7 and 8 regarding his relationship with FCC and his

possible violation of 47USC 19 something and continued obligation of confidentiality of FCC. Did you abandon that argument?

MR. CULPEPPER: The argument?

COMMISSIONER SCOTT: Did you argue that? I didn't hear you.

MR. CULPEPPER: I did not argue that.

COMMISSIONER SCOTT: So, can I take it that you abandoned that argument?

MR. CULPEPPER: I'll abandon that argument because I think . . .

COMMISSIONER SCOTT: I'm glad because I don't have any particular reason to guard the FCC from their former employees with the estimates they gave to our Order on ya'll's 271 case. So I'm glad you didn't.

MR. CULPEPPER: But if I may respond, briefly?

CHAIRMAN BRADLEY: Yes, Sir.

Further Reply by Mr. Culpepper:

MR. CULPEPPER: Point #1. Rule 704 was adopted in 1995 but the note to Rule 704 says this Rule is identical to former Rule 43M3 of the South Carolina Rules of Civil Procedure. The State of South Carolina adopted the South Carolina Rules of Civil Procedure in 1985. It adopted the opinion - this very Rule - in 1990. So, the Rule was in effect when this Commission ruled in Order #95-2. One other thing that I found deficient in counsel's argument was a straightforward explanation as to why Mr. Carowitz Testimony satisfies Rule 702. 702 is the door to get to 704. Mr. Carowitz's Testimony simply does not assist the trier of fact. He takes the facts, i.e. the cost data supplied here, submitted by BellSouth and says "Commission, it

doesn't satisfy the New Services Test. Why? Because I say so because I'm the author of the Pay Phone Orders."

It is respectfully submitted as argumentative. His entire Testimony is essentially a Brief that is going to be submitted as sworn Testimony. It is respectfully submitted that the SCPCA can argue that position in a Brief, present that and attempt to persuade this Commission to accept that view. But, it is an entirely different animal to put it on the stand and let it become evidence and sworn Testimony. One final point as to the distinctions in the Testimony. Mr. Sanders is an FCC . . . he's a BellSouth employee with FCC regulatory background. He sets forth the New Services Test and he says, basically explains why his judgement would meet the test. He does not offer an explanation or an

interpretation of how to consider it. Dr. Taylor is an Economist who is providing Rebuttal Testimony on several issues raised by the Intervenors. Dr. Taylor is not an Attorney and to my knowledge his Testimony has never been stricken in any jurisdiction where he has testified to on the grounds that it constitutes an improper legal opinion. And, I would submit to the extent it may have it and I'm not . . . I'm just . . . for the purpose of argument, saying so. It is to Rebut the assertions and the legal opinions and conclusions set forth by Mr. Carowitz.

CHAIRMAN BRADLEY: You care to comment briefly?

Further Reply by Mr. Beach:

MR. BEACH: Very briefly, Mr. Chairman. First of all, with all

due respect to Mr. Culpepper, Mr. Carowitz does not simply say "here is BellSouth's Cost Data and it doesn't comply with the New Services Test because I say it doesn't." If you look, he gives a number of factual reasons not just why the rates don't qualify but he also gives a number of reasons as to why this whole regime helps to increase competition and ensure the widespread deployment of pay phones. He's testifying here in virtually identical way that William Taylor is. And, what it all boils down to is this, Your Honor. His Testimony, characteristically, is exactly the same as the 3 BellSouth witnesses. BellSouth would have you decide that he can't testify simply because he is an Attorney and that just isn't the law. The fact that he's a lawyer doesn't disqualify him from discussing the same factual issues

that BellSouth's non-lawyer witnesses are discussing and the fact that they're employees of BellSouth or the fact that they're Economist doesn't change that.

CHAIRMAN BRADLEY: Ms. Belser you care to comment?

MS. BELSER: No further comments, Mr. Chairman.

CHAIRMAN BRADLEY: OK. At this time the Commission is going to take a brief break and come back at notice of the bell.

[Short recess]

[Hearing resumed]

CHAIRMAN BRADLEY: Be seated, please. We call the Hearing back to order, please. Mr. Culpepper, we're going to deny your Motion to Strike. You can now present your Witness.

MR. CULPEPPER: Thank you, Your

Exhibit 2

STATE OF SOUTH CAROLINA)
) SS:
COUNTY OF RICHLAND)

Personally appeared before me John Freeman who first being duly sworn, deposes and states as follows:

1. I am the Campbell Professor of Business and Legal Ethics at the University of South Carolina Law School. I am a member of the South Carolina and Ohio Bars.

2. Following my graduation from the University of Notre Dame Law School in 1970, I worked at the Jones, Day, Reavis and Pogue law firm (then known as Jones, Day, Cockley and Reavis). I left Jones Day in 1972 to take a Fellowship at the University of Pennsylvania Law School's Center for Study of Financial Institutions. I subsequently received my LL.M. from Penn Law School. In 1973 I joined the faculty of the University of South Carolina Law School. Besides teaching at USC, I have taught at the University of Texas Law School and Loyola Law School in Chicago. I have also worked for the Securities and Exchange Commission as a special counsel. As a law school professor I have specialized in business courses and legal ethics. I have taught legal ethics for 32 years at USC Law School, at numerous CLE programs, and during the South Carolina Bar Review Course. I have also taught a block of instruction on the subject of "legal malpractice" at USC Law School numerous times in conjunction with our Advanced Professional Responsibility Course. The standard law school legal ethics course involves matters related to conflicts of interest. I have participated in lawyer malpractice cases and lawyer disqualification cases involving allegations of conflicts of interest on numerous occasions. I am familiar with lawyer disciplinary proceedings

raising conflict issues, having participated in the litigation of discipline cases involving alleged conflicts as a lawyer and as an expert witness on various occasions. I have also participated in judicial discipline matters and have taught legal ethics to judges. I have served as a member of the South Carolina Bar's Ethics Advisory Committee and have written various ethics opinions published by the South Carolina Bar. I write a regular column on legal ethics, called "Ethics Watch," published in the *South Carolina Lawyer*, the South Carolina Bar's bi-monthly publication. A copy of my resume is attached.

3. I have been asked by counsel for NuVox Communications, Inc., to review BellSouth's Motion to Strike All Testimony Presented by Mr. Hamilton Russell, III, filed in this case and I have done so. I have investigated the ethics charges in BellSouth's filing and find them groundless.

4. As an expert in the field of legal ethics, it is my opinion based that any attempt by BellSouth to gain a tactical advantage by striking the testimony of Mr. Russell must fail. I say this for several reasons.

5. The Preamble to the Rules of Professional Conduct provisions cited by BellSouth in its motion reads in part: "[T]he purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons." BellSouth is seeking to subvert the ethics rules for procedural advantage in its pending motion.

6. No injury has been suffered by BellSouth as a result of Mr. Russell's taking a job with Nelson Mullins. Specifically, there is no proof whatever that any confidence has been betrayed or secret information leaked or misused. Mr. Russell has assured me he has had no dealings whatever with anyone at Nelson Mullins representing BellSouth since joining the firm. He reports that the only contact within the firm relating

to his employment and the firm's representation of BellSouth occurred in the context of a conflict check with the finding being that he was eligible to join the firm.

7. BellSouth has no claim that Mr. Russell was its lawyer in the matter embraced by Docket No. 2005-57-C. Nor does it have any claim that Nelson Mullins was its lawyer in the matter. Nor does or can BellSouth claim that Mr. Russell's direct testimony pre-filed in the subject matter varies materially from the testimony he previously filed in seven other proceedings held in other states concerning the same main issue. Nor can BellSouth deny that the substance of Mr. Russell's testimony was well known to it prior to his taking a job with Nelson Mullins in May of 2005. Indeed, I am informed that, because the substance of Mr. Russell's testimony was so well known to and understood by BellSouth, that BellSouth and NuVox agreed in advance of that date that there would be only limited cross-examination of Mr. Russell (confined to any new issues raised in his prefiled testimony, or those issues raised on cross-examination by the Office of Regulatory Staff or the Commissioners) when Mr. Russell testified in the South Carolina proceeding.

8. Now, with Mr. Russell having testified essentially along the same lines as he has previously in other proceedings, BellSouth seeks retroactively to muzzle him.

9. BellSouth does not own the facts and it does not own any witnesses in this proceeding. Its efforts to try to boost its litigating power by citing irrelevant ethics rules is transparent.

10. Mr. Russell was subject to cross-examination by the Office of Regulatory Staff and BellSouth Telecommunications, Inc., and fielded questions from the Public Service Commissioners. There is no evidence that his answers to any questions posed

were untrue. That he may have been performing services for Nelson Mullins at the time he testified had no relevance whatever. BellSouth's claim that it owned Mr. Russell's testimony (i.e., that his work with Nelson Mullins prohibited him from testifying "without BellSouth's consent" (BellSouth Mem. at 3)), is absurd in the context of this proceeding and the underlying facts, including the fact that Mr. Russell had offered essentially the same testimony against BellSouth multiple times previously.

11. According to first two sentences in the Preamble to the Rules of Professional Conduct, "The Rules of Professional Conduct are Rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself."

12. BellSouth's specific ethics charges ring hollow in light of the specific facts. The charge that Rule 1.7 was violated is ridiculous. Mr. Russell was a witness in the proceeding, not legal counsel. He never entered a notice of appearance to take part in Docket No. 2005-57-C as an attorney representative of any party, and was not otherwise introduced at the hearing as counsel of record in Docket No. 2005-57-C. Mr. Russell signed no pleading, motion or other document on behalf of any party in Docket No. 2005-57-C. Mr. Russell did not sponsor any witness or offer evidence into the record on behalf of any party during the hearing in Docket No. 2005-57-C, save testimony he presented on his own, as he had in other related proceedings. Moreover, Mr. Russell did not cross-examine any witness, raise or argue any objection, or take part in any arguments of counsel during the hearing in Docket No. 2005-57-C.

13. In my opinion, Mr. Russell's witness appearance and testimony in this Docket does not constitute "representation" of NuVox pursuant to Rule 1.7(a) of the

South Carolina Rules of Professional conduct. I say this because Mr. Russell performed none of the standard roles played by a party's legal counsel and, additionally, were Mr. Russell representing NuVox in the proceeding, the lawyer-witness prohibition of Rule 3.7 would have come into play, and nobody, not even BellSouth, suggests that it did.

14. In appearing before the Commission and offering testimony as a witness in this Docket, Mr. Russell did not "act as an advocate" on behalf of NuVox pursuant to Rule 3.7 of the South Carolina Rules of Professional Conduct. Indeed, in testifying as he did, Mr. Russell was not even offering expert testimony. Rather, he was a fact witness, drawing from his store of knowledge as a legal officer at NuVox to offer evidence and respond truthfully to questions put to him. Significantly, there is no charge by BellSouth that his testimony was anything but truthful.

15. Moreover, there is no claim that when he first testified as a witness, providing his prefiled testimony, that Mr. Russell was involved with Nelson Mullins. All he did after that point was refine and defend the positions he already had taken on the record. Further, my investigation convinces me that Mr. Russell has had no contact whatever with anyone Nelson Mullins who is involved with this Docket. Indeed, I understand that Nelson Mullins, when consulted about Mr. Russell's involvement with NuVox, took the position that it presented no conflict of interest.

16. Because Mr. Russell neither "represented" any party in this Docket nor "acted as advocate" for any party in this Docket, no provision of Rule 1.7(a) or Rule 3.7 of the South Carolina Rules of Professional Conduct prevented Mr. Russell from providing witness testimony in this Docket. Nor does Rule 1.10 call for disqualification. Mr. Russell became a witness in this matter when he filed his direct testimony on May

11, 2005. He did not become ineligible to testify later. BellSouth did not own him or his testimony later. No party owns the evidence in a contested proceeding.

17. I note in passing that BellSouth's motion to strike is akin to a motion to disqualify a lawyer in a proceeding. (Evidently there has been no motion to disqualify since Mr. Russell is actually not a lawyer in this matter, which is a key reason why BellSouth's motion fails.) In any event, I point out here that an essential element of proof in a motion to disqualify a South Carolina lawyer based on alleged unethical behavior is proof of actual prejudice that would be suffered were disqualification not ordered. *See State v. Chisholm,* 439 S.E.2d 850 (1994); *State v. Smart,* 278 S.C. 515, 299 S.E.2d 686 (1982). In *Chisholm* and *Smart,* our courts have recognized that disqualification is a drastic remedy, since it deprives one side to a case of the lawyer of its choice. Hence, in my experience as an expert, the remedy is ordered to protect innocent parties only in exceptional cases. Given the reluctance of our Supreme Court to disqualify a party's advocate, it follows that our courts would likewise be extremely reluctant to bar a party from using evidence that had been presented by a member of the Bar and that had been subject to cross-examination in the proceeding. I note in passing that BellSouth fails to cite a single case validating the extraordinary relief it seeks in its motion.

18. In my opinion, BellSouth has no more right to insist that Mr. Russell's truthful testimony be stricken and hidden from public view than it would in a case where a Nelson Mullins lawyer witnessed a traffic collision caused by a BellSouth truck driver. In the accident case, the testimony would be adverse, but would be admissible and appropriate because the Nelson Mullins lawyer would be a mere witness. An attempt by tortfeasor BellSouth to eliminate the Nelson Mullins' witness-lawyer's testimony in the

accident case would be wrongful; it would smack of obstruction of justice. We have tribunals, after all, to get at the truth, not to effectuate cover-ups based on convoluted and inappropriate "ethical" arguments.

19. In my opinion, as an expert in the field of legal ethics, BellSouth's motion to strike is meritless and should be denied. I hold this opinion to a reasonable degree of professional certainty.

John Freeman
JOHN FREEMAN

SWORN AND SUBSCRIBED BEFORE ME this
25th day of June, 2005
Nancy V. Freeman
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires Sept. 10, 2008

RESUME
Professor John P. Freeman

Address and phone numbers:	2329 Wilmot Avenue Columbia, South Carolina 29205 803-254-4667 (home) 803-777-7224 (Law School)
Education history:	LL.M., 1976, University of Pennsylvania Law School; J.D., 1970, University of Notre Dame Law School; B.B.A., 1967, University of Notre Dame (Accounting)
Employment history:	1970-72, Attorney, Jones, Day Law Firm, Cleveland, Ohio 1972-73, Fellow, University of Pennsylvania Law School Center for the Study of Financial Institutions 1973-75, Assistant Professor of Law, University of South Carolina 1974 and 1975 (Summers), Special Counsel, Division of Investment Management, SEC, Washington, D.C. 1975-78, Associate Professor of Law, University of South Carolina; Visiting Associate Professor of Law at Loyola Law School (Chicago) Spring 1977 1978-Present, Professor of Law, University of South Carolina; Visiting Professor of Law at University of Texas Law School, Summer 1978
Honors and Awards:	Undergraduate: Member Beta Alpha Psi (Honorary Accounting Fraternity) Law School: Executive Editor, Notre Dame Lawyer; Distinguished Military Graduate
Professional:	At University of South Carolina Law School: Senior Class Annual Outstanding Faculty Award of 1975, 1976, 1977,1984; Winston Churchill Award, South Carolina Jury Trial Foundation 1995; Distinguished Service Award, South Carolina Trial Lawyers Association 2000; Appointed Member, South Carolina Judicial Merit Selection Commission (presently serving)

Admitted to Practice: Ohio; South Carolina

Teaching History

Courses Taught: Professional Responsibility, Legal Accounting, Business Associations, Corporations, Agency-Partnership, Securities Regulation, Corporate Finance, Business Planning, Legal Research and Writing, Business Crime, Legal Malpractice Component of Advanced Legal Profession Seminar

Scholarly and Professional Publications

Author, Regular Legal Ethics Column for South Carolina Lawyer.

Article, It's the Conflict of Interest, Stupid, Money Mgm't Exec., May 17, 2004, at 14.

Chapter on Legal Opinion Liability in Legal Opinion Letters A Comprehensive Guide to Opinion Letter Practice (M. John Sterba, Jr., ed. 2003) (plus annual updates).

Chapter in South Carolina Damages Treatise on Damages in Securities Cases (2004)

Article, The Ethics of Using Judges to Conceal Wrongdoing, 55 S.C.L. Rev. 829 (2004).

Article (with Stewart Brown), Mutual Fund Advisory Fees: The Cost of Conflicts of Interest, 26 J. Corporation Law 610 (2001).

Article, Liens, Fees and Taxes, South Carolina Trial Lawyer, Summer 2000, at 26.

Article, A Business Lawyer Looks at the Internet, 49 S.C.L. Rev. 903 (1998).

Article, Payments to Medical Care Providers: What Are the Lawyer's Obligations? South Carolina Lawyer, September-October 1994, at 39.

Article, Current Developments in Lawyer Liability: Coping with the Fraudulent Client, Delaware Lawyer, Winter 1993, at 27.

Article, Treble Damage Statutes Can Increase Trust Recoveries, 4 Probate Practice Reporter, June 1992, at 1.

Article (with Nathan Crystal), Scienter in Professional Liability Cases, 42 S.C.L. Rev. 783 (1991).

Article, How Computerized Databases Are Redefining Due Diligence, Carolina Lawyer (July-August 1991).
Article, When Are Lawyers' Gifts to Judges Improper? Carolina Lawyer (November-December 1990).

Article, Current Developments in Legal Opinion Liability, 1989 Col. J. Bus. L. 235.

Article, Understanding the Joint Client Exception to the Attorney-Client Privilege, Carolina Lawyer (July-August 1989).

Article, A RICO Primer, 1985 Small Business Counselor No. 4.

Article, The Use of Mutual Fund Assets to Pay Marketing Costs, 9 Loy. Chi. L.J. 553 (1978).

Article, Marketing Mutual Funds and Individual Life Insurance, 28 S.C.L. Rev. 1-124 (1976), reprinted in Nat'l Ins. L. Rev. Serv. (1977).

Article, Opinion Letters and Professionalism, 1973 Duke L.J. 371-439, reprinted in Securities Law Review 1974 (E. Folk, III, ed.).

Co-author, Multi-student Survey, The Mutual Fund Industry: A Legal Survey, 44 Notre Dame Lawyer 732-983 (1969).

Case Comment, Escott v. BarChris Constr. Corp., 44 Notre Dame Lawyer, 122-40 (1968).

Other Scholarly Activities

Speeches (with accompanying outlines) presented at numerous CLE courses sponsored by various entities including the South Carolina Bar, University of South Carolina Law School and the South Carolina Supreme Court.

CLE Presentations 2001-04: Greenville County Solicitor's Office, Prosecutorial Ethics, May 9, 2005; Mass Tort Seminar, NYC, Discovery Abuse Issues, March 18, 2005; S.C. Ass'n of Counties, Legal Ethics, Dec. 10, 2004; Federal Bar Ass'n, S.C., Ethics CLE, Dec. 10, 2004 ½ hr.; S.C. Bar Construction Law Section, Ethics CLE on the new Oath; Dec. 3, 2004; NASAA, Salt Lake City, Legal Ethics for Securities Enforcement Lawyers, Dec. 4, 2004; DSS Ethics Training, Dec. 3, 2004; (2-hr. lecture); PIABA, Ethics for Securities Lawyers, and Comments on the Mutual Fund Mess, Oct. 20, 2004 (2 hrs.); Commercial Law League of America, Southern Region Members' Ass'n, Ethical Issues in Commercial Law, Oct. 1, 2004; S.C. Bar, Annual Probate Bench/Bar, Ethics in Probate Court, Sept. 17, 2004; Charleston Bar Ass'n, Lawyer's Oath Seminar, August 27, 2004; S.C. Government Lawyers, Legal Ethics for Government Attorneys, August 20, 2004; S.C. Judiciary, Judicial Ethics Lecture, August 19, 2004; S.C. Bar, Accounting for Non-tax Lawyers, May 2, 2004; Palmetto Land Title Ass'n, Ethics for Closing Attorneys, April, 24, 2004; Richardson, Patrick Law Firm, CLE on Legal Issues Concerning the

Mutual Fund Mess, March 26, 2004; S.C. Bar, An Update on Ethical Considerations for the Guardian, March 5, 2004; S.C. Prof. Society on the Abuse of Children, Ethics and Child Abuse, Feb. 26, 2004; National Ass'n of State Boards of Accountancy, Professionalism, Accountability and the Accounting Profession, Feb. 9, 2004; Fidelity Nat'l Title, Ethical Duties of Closing Attorneys, Feb. 5, 2004; S.C. Bar, Annual Convention, Ethical Issues in Handling the Appeal, Jan. 22, 2004 (co-presenter); National Ass'n of State Securities Administrators, Ethics for State Securities Enforcement Officials, Dec. 13, 2003 (2-hr. lecture.); DSS Ethics Training, Dec. 12, 2003; (2-hr. lecture); S.C. Ass'n of Counties, Legal Ethics, Dec. 12, 2003 South Carolina Trial Lawyers Ass'n, Legal Ethics, Dec. 6, 2003; South Carolina Bar, The Ethics of Using Judges to Conceal Wrongdoing, Oct. 24, 2003; South Carolina Bar, Everyday Ethics, Judicial and Attorney, Oct. 17, 2003; Federal Bar Ass'n, Ethics for Social Security Law Practitioners, Oct. 24, 2003 (panel discussion); South Carolina Court of Appeals, Ethics for Court Employees, Sept. 30, 2003; John Belton O'Neall Inn of Court, Dealing with Recurring Civility Problems in Practice (panel moderator), Sept. 23, 2003; South Carolina Bar, Ethics for Family Law Lawyers, Sept. 19, 2003 (only 12 mins.); North Carolina-South Carolina Construction Law Section, Hot Topics for Construction Lawyers, Sept. 13, 2003; South Carolina Bar, New Ethics Issues, Aug. 22, 2003 (videotape lecture); Motley Rice Law Firm, Criminal Law for the Plaintiff's Lawyer, August 16, 2003; South Carolina Defense Lawyers' Assoc., Hot Topics for the Defense Bar; Confidentiality Including HIPAA Problems, July 25, 26, 2003; John Belton O'Neall Inn of Court, Ethical Lessons from Enron, Feb. 25, 2003; S.C. Bar, Ethics Lessons from Lawyers Drawn from Recent Corporate Misbehavior, Jan. 24, 2003; S.C. Bar, Ethics for the Guardian ad Litem, Jan. 10, 2003; DSS Ethics Training, Dec. 13, 2002; (2-hr. lecture) S.C. Ass'n of Counties, Legal Ethics, Dec. 13, 2002; Lexington County Bar Ass'n, Legal Ethics, December 11, 2002 (2-hr. lecture); SCTLA, Legal Ethics, December 7, 2002; Haynsworth Baldwin Law Firm In-house Ethics CLE, Nov. 8, 2002 (2-hour lecture); S.C. Bar, Ethics for Prosecutors and Defense Counsel (Panel Member) Nov. 8, 2002; National Justice Center, Ethics for Criminal Lawyers, Oct. 4, 2002; S.C. Bar, Ethics Lessons Lawyers Can Learn from Corporate America, Sept. 27, 2002; S.C. Administrative and Regulatory Law Ass'n, Learning from Bad Examples–Ethics Lessons Drawn from Others' Mishaps, Sept. 20, 2002; S.C. Bar, Lawyer Trust Account Duties, June 2002 (videotape lecture); S.C. Probate Judge, Legal Ethics, May 10, 2002; U.S.C. Law School Class of 1992 Reunion, Ethical Problems Under Rule 4.2, April 12, 2002; S.C. Bar, Pitfalls You Want to Avoid, April 19, 2002; S.C. Bar, Ethical Dilemmas in Trial and Pre-trial Practice, March 1, 2002; S.C. Bar, Criminal Ethics Update, Jan. 25, 2002 (panel member); John Belton O'Neall Inn of Court, Ethical Issues in Dealings with Medical Care Providers and the Other Side's Former Employees, Jan. 14, 2002 (½ hour lecture); S.C. Ass'n of Counties, Confidentiality and You, Dec. 7, 2001; SCTLA, When They Say It's Not About Money . . . ., Dec. 1, 2001; S.C. Bar, Securities Regulation Primer, Nov. 2, 2001, S.C. Attorney General, Ethics For Government Lawyers, Oct. 27, 2001 (45 mins.); Stewart Title CLE, Ethics for Closing Attorneys, Oct. 17, 2001; S.C. Workers' Compensation Educational Ass'n, Ethics for Workers Compensation Attorneys, Oct. 15, 2001 (2 hrs); S.C. Insurance Reserve Fund, Ethics for Taxpayer-Paid Lawyers, Oct. 5, 2001; Farm Credit System District Attorneys' Conf., Ethics Tips for Business Lawyers, Oct. 2, 2001; N.C. Bar Ass'n, Ethics Issues for the Construction Lawyer, Sept. 28. 2001;

S.C. Bar, Thou-Shalt-Nots for the Ethical Family Law Lawyer, Sept. 21, 2001 (15 mins.) S.C. Appellate Courts, Ethics for Law Clerks and Staff Attorneys, August 27, 2001; SCTLA, The Lien Menace, August 3, 2001 (½ hr. lecture); Judicial Merit Selection Comm., Some Key Rules Judges Need to Follow, July 31, 2001, S.C. Ass'n of Counties, Twelve Steps to Solving Conflicts Problems by Lawyers Representing Government Agencies, July 26, 2001; Association of SC Claimant Workers' Comp. Atty's, Dealing with Off-beat Ethical Situations, May 4, 2001 (1 hr. Lecture; 1 hr. Ethics Panel Moderator); Legal Counsel Conference of National Ass'n of State Boards of Accountancy, Accountants, Regulatory Authority and the Internet, Feb. 5, 2001; S.C. Bar Annual Meeting, Learning from Bad Ethical Behavior in the New Millennium, Jan. 29, 2001; S.C. Masters In Equity, Lose Weight Without Dieting or Exercise: 30 Sure-Fire Ways to Attract Grievances, Jan. 5, 2001; S.C. Department of Social Services, What Rules that Good and Honest Lawyers Need to Know to Stay Out of Trouble, Dec. 15, 2000 (2 hrs.); S.C. Gov't Attorneys, Ethics and the Government Lawyer, Dec. 13, 2000; Lexington County Bar Ass'n, What Rules that Good and Honest Lawyers Need to Know to Stay Out of Trouble, Dec. 11, 2000 (2 hrs.); S.C. Comm'n on Lawyer Discipline, What Rules that Good and Honest Lawyers Need to Know to Stay Out of Trouble, Dec. 7, 2000 (2 hrs.); SCTLA: Ethics Rules You Didn't Learn in Law School, Dec. 2, 2000; Appellate Judges Conf., Seattle, WA, Lose Weight Without Dieting or Exercise: 30 Sure-Fire Ways to Attract Grievances, Nov. 18, 2000 (1 3/4 hr.); Stewart Title CLE, Ethical Duties of the Closing Attorney, Nov. 16, 2000; S.C. Alliance of Legal Ass't Ass'ns, What Every Law Office Employee Should Know About Legal Ethics, Oct. 13, 2000; S.C. Bar, Limiting Taxation of Your Client's Recovery, Sept. 29, 2000 (½ hr.); S.C. Bar, Ethics Videotape Course for Pilot Distance Learning Program, Sept. 26, 2000 (1 hr. Family Law), Sept. 27, 2000 (1 hr. Criminal Law); South Carolina Ass'n of Criminal Defense Lawyers, Participation on Ethics Panel (2 hrs.) Sept. 22, 2000; SC Supreme Court Commission on Lawyer Discipline, Introduction to ABA Proposed Changes in Rules of Lawyer Discipline and Professional Conduct (2hrs; with Prof. Wilcox) Sept. 20, 2000; York County Bar Ass'n, Ethical Pitfalls You Need to See Coming, (2 hrs.) Sept. 19, 2000; S.C. Bar, Ethical Pitfalls for the Office Lawyer, July 14, 2000; S.C. Bar Annual Meeting, Rules that Good and Honest Lawyers Need to Follow to Stay Out of Trouble (2 hours) June 17, 2000; S.C. Bar, Departing Lawyers' Duties, How to Handle Money, and Bench and Bar Relationships (panel), April 14, 2000; Haynsworth, Baldwin Law Firm, Ethics and Labor Lawyers (2 hours), April 13, 2000; U.S.C. School of Engineering, Colloquium on the Ethics of Whistle Blowing, March 1, 2000; U.S.C. Law School, Ethics Update for Alumni (2 hrs), March 24, 2000; S.C. Bar, Developments in Legal Ethics, the Past Year's Top Ten, Jan. 7, 2000.

Member, ABA Section of Business Law Task Force on Legal Opinions
Participant in Conference on Legal Opinions at Silverado, California, May 31-June 3 (1989).

University and Community Service

Author, Report on Tax Sheltered Annuities to USC Faculty and Staff (1976).
Faculty Senate (1996-98)

University Committees
Promotion and Tenure
Faculty Welfare
Annuities and Insurance
Budget Committee

Law School Committees
Faculty Selection
Academic Standing
Minority Student Affairs
Executive Committee (currently serving)
Dean Evaluation Committee
Dean Search Committee

Chairman, Supreme Court Commission on Continuing Lawyer Competence (1980-83)

President, Leaphart Elementary School PTO (1983)
Chairman, Irmo Middle School-School Improvement Council (1985)
Member, Irmo Middle School-School Improvement Council (1985-89),
President, Irmo High School Parent, Teacher, Student Association (1988-89, 1992-93) Member Executive Board (1988-93)
Member, Irmo High School-School Improvement Council (1988-93)
Founder and Past-president, University of Notre Dame Club of South Carolina
Lexington District Five and South Carolina State School Volunteer of the Year 1993